

MAR 22 1996

DOUGLAS A. NELSON

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March 21, 1996

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Secretary  
Federal Communications Commission  
1919 "M" Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Comments in Opposition to  
Petition for Rule Making  
RM-8763

Dear Sir:

Enclosed herewith for "Formal" filing with the Commission are one (1) original, with hand signature, and nine (9) copies of the undersigned's Comments in Opposition to Petition for Rule Making in this matter, including the original and four (4) copies for regular distribution and five (5) copies to include Commissioners. The original and each copy include the Certificate of Service of the undersigned in accordance with Section 1.405 of the Commission's rules (47 C.F.R. Section 1.405).

Please acknowledge receipt of this filing using the enclosed copy of this letter and the enclosed stamped, self-addressed envelope.

Should the staff of the Commission have any questions or comments with regard to this filing, mail or collect telephone calls may be addressed or made, as the case may be, to the undersigned at the address or telephone number given in the heading of this letter.

Very truly yours,

*Douglas A. Nelson*  
Douglas A. Nelson

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
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Modification and Clarification of )  
Policies and Procedures Governing )  
Siting and Maintenance of Amateur )  
Radio Antennas and Support Struc- )  
tures, and Amendment of Section )  
97.15(e) of the Rules Governing )  
the Amateur Radio Service )

RM- 8763

To: The Commission

COMMENTS IN OPPOSITION TO PETITION FOR RULE MAKING

Douglas A. Nelson  
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Post Office Box 71  
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(423) 821-1368

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To: The Commission

COMMENTS IN OPPOSITION TO PETITION FOR RULE MAKING

Douglas A. Nelson (Commentor), pursuant to the Commission's Rules (47 C.F.R.), respectfully requests that **the Commission reject and dismiss in its entirety the Petition for Rule Making** of the American Radio Relay League, Incorporated (the League, or the Petitioner) herein. In support of his request, Commentor states as follows:

I. Introduction

1. Commentor is a resident and homeowner for 28 years in the Town of Lookout Mountain, Tennessee, a small residential suburb of Chattanooga, Tennessee. He is a graduate electrical engineer, a lawyer and the holder of the Amateur Extra-Class license, having been a Commission-licensed radio amateur for approximately 45 years. As such, and as a member of the League at this time and for many years, Commentor is very familiar with the interests of residential homeowners and with the technical and regulatory matters

relating to amateur radio referred to in the Petition and in these Comments.

II. The Action Sought by Petitioner  
Would Seriously Injure the Fundamen-  
tal Interests of Millions of Citizens

2. In seeking to establish an antenna height of 70 feet in residential neighborhoods as "reasonable" and urging the Commission to deploy its preemptive powers to strip from localities and even states any defense against the erection of such monumentally-intrusive structures in such neighborhoods across the country, the League violently assaults the property interests of millions of Americans. Its arrogance in asking the Commission to "clarify that the role of local governments and municipalities" (Petition, p.2) is to accommodate such structures is breathtaking.

3. Little exercise of the imagination is required to picture any one of the many thousands of small residential towns across the nation, similar to Commentor's, where residents have spent their own time and money and their local taxes to improve the appearance of their homes and communities. Some have even incurred the heavy costs of burying power, cable-television and telephone lines to improve their appearance (Commentor's vacation house is in such a town). Through local legislation or land-use covenants, or both, typically restricting the height of structures to two stories and forbidding unsightly objects, residents have sought to further this basic human desire to

dwell in attractive surroundings and to maintain or increase the value of their dearly-bought property.

4. Now comes the League, asking the Commission, through an exercise of Federal preemption, to take from these villages and their residents their defenses against the erection of looming seven-story structures, surmounted by huge multi-element antenna arrays perhaps 30 feet or more in length, so that any amateur-radio hobbyist who cares to do so may more pleasurably indulge his avocation at the expense of his neighbors. Petitioner even baldly proclaims that such structures may be erected in the midst of a neighborhood of one and two-story dwellings "without adverse impact on aesthetics or safety." (Petition, p.33; emphasis added) One may only marvel at such a concept of aesthetics! Plainly, such a damaging exercise of Federal supremacy could be justified only if it could be shown to result in an enormous public benefit.

III. The Petition Fails to Show a Connection Between the  
Action Sought and Any Resulting Public Benefit

5. In seeking to enlist the Commission in its assault on fundamental, legitimate local interests, Petitioner does not (because it cannot) point to any specific, substantial public benefit which would result if it succeeded in doing so. Instead, its strategy is to recite the general public benefits historically provided by the Amateur Radio Service (the Service) and to convince the Commission that antennas less than 70 feet high are "ineffective," urging it to conclude that these public benefits depend upon

removing every obstacle to any amateur operator being allowed to erect a 70-foot-high antenna in a residential neighborhood. **A single question demonstrates the fatal flaw in the Petition's entire argument: if an antenna less than 70 feet high is ineffective, how has the Service achieved the historical public benefits recited?** For many reasons, most of which have nothing to do with local restrictions, relatively few amateur operators have antennas 70 or more feet in height. Yet, the Service has provided all the public benefits cited in the Petition! **The Petition does not even assert that, if the barriers to "effective" antennas are removed by Commission action, the public benefits will be increased.** Instead, it offers ominous insinuations, wholly unsupported by any evidence whatsoever, that the public benefits may disappear if its request is not granted; e.g., (Petition, p.27) "...the Commission must provide this requested relief...which is critical to the survival of the Amateur Radio Service in the United States in the long term." or that the action sought in the Petition is "compelling and urgent." (Petition, p.46) No argument is made that substantial numbers of amateur operators would erect 70-foot-high towers if the Petition succeeds (but even in-substantial numbers of antennas would devastate many communities), nor is it asserted that, even if large numbers of amateurs did erect such towers, more benefits would accrue to the public as a result.

6. Even if Petitioner could explain how the Ser-

vice has managed to provide public benefits despite being restricted to ineffective antennas, its argument would fail on the assertion that an antenna less than 70 feet high is "ineffective." It is true that, at some of the frequencies used by some amateur operators, "higher is better." At other frequencies used by other amateurs; e.g., those upon which hand-held and mobile VHF (Very High Frequency) and UHF (Ultra High Frequency) transceivers are operated and the frequencies employed by worldwide amateur satellite communications, antenna height is not a consideration. Even at the frequencies and in amateur operations where "higher is better," **challenging, satisfactory and publicly beneficial domestic and worldwide communications are conducted daily by the great majority of amateurs who, after all, do not have and have never had 70-foot-high antennas,** as Commentor and the League both well know. Commentor has communicated with countless stations, including hundreds of foreign amateur stations in all parts of the world, employing relatively low power (usually, 100 watts input; occasionally as little as one or five watts input) and a nearly-invisible horizontal-wire antenna 25 feet above (and parallel to) the ground. The pages of the League's organ, QST, have carried scores of articles over the years extolling the pleasure and challenge of communications using minimal power and antennas, including antennas consisting of wires strung in attics or even around room ceilings.

7. To encourage sympathy for its strategy, the

Petition suggests that the Service is made up of public benefactors, hampered, harrassed and financially punished by short-sighted, ignorant local governing bodies who simply do not understand their selfless urge to serve. **In fact, amateur radio is merely a hobby pursued primarily, and in most cases exclusively, purely and simply for avocational enjoyment.** Public service is only incidental. Emergency services (including training and actual emergency communications) are actually rendered by a small minority of these hobbyists and, by these, for only a part of their operating time. Other public benefits of the Service (development of technical and operating skills, advancement of the radio art, furtherance of international good will) are inherent in pursuit of the hobby, not sacrifices made by hobbyists in the public interest. Petitioner repeatedly tries to paint a more appealing picture; e.g., referring (Petition, p.47) to "...litigation between the Commission licensee (who is attempting to do no more than to provide public service communications), and the very municipality that the radio amateur seeks, by his or her communications, to serve." Or, (Petition, p.21) "...using post-tax dollars to protect what is, after all, a public service avocation." All of this is transparent nonsense. Amateur operators pursue their hobby principally for the various kinds of fun it offers, just as



Commentor does; but fun ought not be pursued at the expense of one's neighbors as a matter of legal right.

#### IV. The Action Sought by the Petition Would Be Harmful to the Service

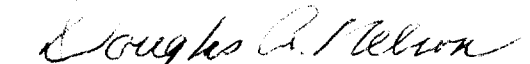
8. Amateur operators have, in general, historically enjoyed the good will of their neighbors (although the level of unhappiness at radio-frequency interference attributed to amateur operations seems, by media accounts, to be on the increase). Recognition of the public benefits provided by the Service has allowed it to enjoy the use of valuable spectrum coveted by other would-be users. If citizens find that their residential neighborhoods are to have seven-story structures imposed upon them by hobbyists seeking marginal additional pleasure from their pastime and that their Federal government has stripped them of the defenses that they would have against a commercial interest which attempted such an outrage, they will form an unfavorable opinion of the Service and will ultimately seek relief (which will probably not be limited to the question at hand) through their elected Federal representatives.

#### V. Summary and Conclusion.

9. The Petitioner, in an ill-advised effort to further the hobby interest of a portion of its membership, **without showing any resulting benefit to the public and to the likely injury of the Service**, seeks to enlist the aid of the Commission in stripping millions of American homeowners of most of their protection against the intrusion of seven-story structures into their residential communities.

10. Therefore, Commentor asks that the Commission deny and dismiss the Petition in its entirety.

Respectfully submitted,

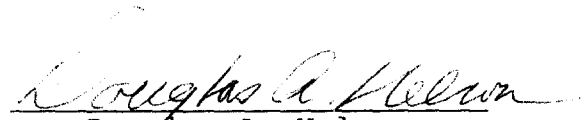
  
Douglas A. Nelson

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Post Office Box 71  
Lookout Mountain, Tennessee 37350

March 21, 1996

CERTIFICATE

DOUGLAS A. NELSON Certifies that he served a copy of the attached Comments in Opposition to the Petition for Rule Making upon Messrs. Both Freret & Imlay, Counsel for Petitioner, by depositing the same, securely wrapped and with first-class postage affixed and addressed to such Counsel as shown by the Petition herein, into the repository maintained by the United States Post Office at the Lookout Mountain, Tennessee Post Office this 21st day of March, 1996 before 5 P.M., Eastern Standard Time.

  
Douglas A. Nelson